

1 UNITED STATES DISTRICT COURT
2 WESTERN DISTRICT OF NEW YORK
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6 UNITED STATES OF AMERICA,) 21CR135
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MICHAEL REGAN, Buffalo, New York
December 8, 2021
Defendant. 1:30 p.m.

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APPEARANCE OF COUNSEL/DETENTION HEARING
Transcribed from an electronic recording device
All Parties appeared via Zoom for Government Platform

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE H. KENNETH SCHROEDER, JR.
UNITED STATES MAGISTRATE JUDGE

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1 USA VS. M. REGAN

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P R O C E E D I N G
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THE CLERK: This is United States versus Michael Regan, docket 20M183. This is the appearance of counsel and detention hearing. Assistant United States Attorney Jonathan Cantil appearing on behalf of the government; Assistant Federal Public Defender appearing with defendant; and Probation Officer Brian Mamizuka.

MAGISTRATE JUDGE SCHROEDER: Good afternoon, Mr. Regan. Can you hear me?

THE DEFENDANT: Yes, sir.

MAGISTRATE JUDGE SCHROEDER: Once again, we're conducting this proceeding this way by video conferencing as a means of keeping you as safe as reasonably possible, the attorneys, my court staff, and the probation office from spreading infection as I described last week. Do you consent to us to continue using this video conferencing procedure for this proceeding.

THE DEFENDANT: Yes, your Honor.

MAGISTRATE JUDGE SCHROEDER: We're here for a detention hearing. Are we ready to proceed?

1 USA VS. M. REGAN

16:24:57 2 MS. KUBIAK: Judge, I think you need to
16:24:59 3 formally appoint me. He was making a determination of
16:25:02 4 whether or not he was going to retain and we haven't
16:25:05 5 been formally assigned to represent him, so I think he
16:25:08 6 needs to be qualified and then we can move forward.

16:26:53 7 MAGISTRATE JUDGE SCHROEDER: Thank you, Ms.
16:26:55 8 Kubiak.

16:26:55 9 Mr. Regan, we did adjourn this last week in
16:27:03 10 order to give you an opportunity to effectuate your
16:27:05 11 right under the Constitution to hire an attorney of your
16:27:08 12 choice, but it was a question of whether you were going
16:27:10 13 to be financially able to complete that. Have you made
16:27:14 14 a decision as to whether you are going to be hiring an
16:27:17 15 attorney?

16:27:18 16 THE DEFENDANT: Yes, your Honor. I'm not
16:27:19 17 going to be able to afford an attorney, your Honor.

16:27:22 18 MAGISTRATE JUDGE SCHROEDER: And are you
16:27:23 19 asking the Court to assign an attorney to represent you
16:27:27 20 because of your financial circumstances?

16:27:28 21 THE DEFENDANT: Yes, your Honor.

16:27:29 22 MAGISTRATE JUDGE SCHROEDER: All right.
16:27:30 23 Before I can determine whether you qualify financially
16:27:34 24 to have such representation made, I must first determine
16:27:39 25 what those circumstances are. The only way I can

1 USA VS. M. REGAN

16:27:42 2 reasonably do that is by having me place you under oath
16:27:46 3 and question you about your financial circumstances and
16:27:48 4 I'm also going to require, at a time when it can be done
16:27:51 5 reasonably easily, to fill out and sign and swear to an
16:27:55 6 affidavit setting forth your financial circumstances.
16:27:59 7 But I don't want to delay the process any longer than
16:28:02 8 necessary, so I'm going to rely on my questioning you
16:28:09 9 under oath as to your financial circumstances for
16:28:12 10 purposes of making my decision at this time. Do you
16:28:15 11 agree to allow me to place you under oath and question
16:28:18 12 you about your finances?

16:28:20 13 THE DEFENDANT: Yes, your Honor.

16:28:20 14 MAGISTRATE JUDGE SCHROEDER: All right. I'm
16:28:28 15 sorry, I'm looking for your first name.

16:28:32 16 THE DEFENDANT: Michael.

16:28:33 17 MAGISTRATE JUDGE SCHROEDER: I apologize for
16:28:34 18 that. Do you, Michael Regan, solemnly swear that the
16:28:36 19 answers and statements you are about to give and make
16:28:39 20 will be the truth, the whole truth and nothing but the
16:28:41 21 truth so help you God?

16:28:42 22 THE DEFENDANT: Yes, your Honor.

16:28:43 23 MAGISTRATE JUDGE SCHROEDER: Because you are
16:28:44 24 now under oath, you must answer each and every one of my
16:28:47 25 questions, not only truthfully, but also completely

1 USA VS. M. REGAN

16:28:50 2 because if you should knowingly and/or intentionally
16:28:53 3 answer any question less than truthfully by withholding
16:28:56 4 material facts or information, that can result in your
16:28:59 5 being charged with the additional crime or crimes of
16:29:01 6 perjury and/or making a false statement. Do you
16:29:04 7 understand?

16:29:04 8 THE DEFENDANT: Yes, your Honor.

16:29:05 9 MAGISTRATE JUDGE SCHROEDER: I know you had
16:29:08 10 employment. Are you still considered to be employed?

16:29:13 11 THE DEFENDANT: No, your Honor. Right now
16:29:33 12 I'm locked out with no pay.

16:29:36 13 MAGISTRATE JUDGE SCHROEDER: Do you have any
16:29:36 14 bank accounts anywhere?

16:29:38 15 THE DEFENDANT: Yes, I have a Key Bank
16:29:39 16 account joined with my wife, and right now we have, I
16:29:43 17 think, \$1500.

16:29:44 18 MAGISTRATE JUDGE SCHROEDER: Do you have any
16:29:45 19 money hidden anywhere?

16:29:47 20 THE DEFENDANT: No, sir.

16:29:47 21 MAGISTRATE JUDGE SCHROEDER: Do you have
16:29:48 22 access to in a safe-deposit box.

16:29:51 23 THE DEFENDANT: No, sir.

16:29:51 24 MAGISTRATE JUDGE SCHROEDER: Is anyone
16:29:52 25 holding any money for your benefit other than what might

1 USA VS. M. REGAN

16:29:55 2 have been taken from you when you were arrested?

16:29:58 3 THE DEFENDANT: No, sir.

16:29:58 4 MAGISTRATE JUDGE SCHROEDER: Do you have any
16:29:59 5 lawsuits pending where you hope to collect money in the
16:30:02 6 near future?

16:30:03 7 THE DEFENDANT: I have a Workers' Comp
16:30:09 8 injury, but all this going on, if I'm still allowed.
16:30:17 9 The injury was back in April of this year, so, I
16:30:21 10 wouldn't even be able to get this scheduled until
16:30:25 11 sometime after next year. But, like I said, with this
16:30:28 12 going on, I don't know if they will allow me to do it
16:30:32 13 now.

16:30:32 14 MAGISTRATE JUDGE SCHROEDER: All right. Do
16:30:34 15 you own any real property?

16:30:37 16 THE DEFENDANT: My wife owns two vehicles.

16:30:41 17 MAGISTRATE JUDGE SCHROEDER: How about
16:30:41 18 houses?

16:30:42 19 THE DEFENDANT: No, sir.

16:30:42 20 MAGISTRATE JUDGE SCHROEDER: Do you have any
16:30:49 21 children that you support?

16:30:51 22 THE DEFENDANT: I have my 4-year-old
16:30:55 23 daughter and my 2-year-old daughter.

16:30:57 24 MAGISTRATE JUDGE SCHROEDER: And what are
16:30:58 25 your monthly expenses, approximately?

1 USA VS. M. REGAN

16:31:00 2 THE DEFENDANT: With everything just added
16:31:04 3 up like rent and everything, probably around \$2,800 or
16:31:12 4 \$2,900.

16:31:12 5 MAGISTRATE JUDGE SCHROEDER: A month.

16:31:13 6 THE DEFENDANT: Yes.

16:31:13 7 MAGISTRATE JUDGE SCHROEDER: And what were
16:31:14 8 you taking home, paycheck wise, approximately on a
16:31:17 9 monthly basis?

16:31:18 10 THE DEFENDANT: Approximately like \$3,600.

16:31:22 11 MAGISTRATE JUDGE SCHROEDER: All right.

16:31:23 12 Based on the responses given to me by the defendant
16:31:25 13 regarding his financial circumstances, I find that he
16:31:29 14 qualifies financially to have the Court assign counsel
16:31:31 15 to represent him. And I'm assigning the Federal Public
16:31:35 16 Defender's Office for that purpose, and request Ms.
16:31:37 17 Kubiak, of that office, to undertake the representation
16:31:40 18 of the defendant. And, Ms. Kubiak, I will now designate
16:31:43 19 you as the attorney of record and thank you for your
16:31:46 20 having stood in previously to help facilitate the
16:31:51 21 movement of this case.

16:31:52 22 MS. KUBIAK: Yes, your Honor. No problem.
16:31:54 23 Thank you.

16:31:56 24 MAGISTRATE JUDGE SCHROEDER: All right.

16:31:57 25 We're here for a detention hearing. And the issue of a

1 USA VS. M. REGAN

16:32:02 2 preliminary hearing. Are we ready to proceed?

16:32:07 3 MR. CANTIL: Yes, Judge.

16:32:09 4 MS. KUBIAK: Yes, Judge.

16:32:09 5 MAGISTRATE JUDGE SCHROEDER: All right. Mr.
16:32:12 6 Cantil.

16:32:12 7 MR. CANTIL: Yes, your Honor. As the
16:32:15 8 government stated in its last appearance on Friday, the
16:32:18 9 government is moving for detention in this case. In
16:32:22 10 this case, there is a presumption of detention under 18
16:32:26 11 U.S.C. 3142(e)(3)(E) because the crimes are as to
16:32:34 12 production of child pornography and enticement of a
16:32:37 13 minor. When you look at the facts of this case, as I'm
16:32:41 14 sure you read in the Criminal Complaint, it's clear that
16:32:44 15 there are no conditions or combination of conditions
16:32:47 16 that can ensure safety of the community, particularly
16:32:52 17 the charge, the victim who is referenced in the
16:32:55 18 indictment and additional victims in the public that may
16:33:00 19 exist. I think it's warranted to kind of go through the
16:33:05 20 facts of this case and some of the conversations the
16:33:09 21 defendant had with the alleged victim to, kind of,
16:33:14 22 demonstrate his danger to the public. The
16:33:21 23 conversations, the Complaint alleges that the defendant
16:33:25 24 engaged with a 13, 14-year-old minor female to produce
16:33:30 25 child pornography, and they did, in fact, meet and

USA VS. M. REGAN

16:33:35 2 engage in sexual contact, including oral sex. The
16:33:39 3 relationship began sometime before August 5th of this
16:33:43 4 year of 2020. The defendant, then 37 years old, I
16:34:01 5 believe, wrote to this 13-year-old victim, lied about
16:34:05 6 his identity, said his name was "Jason," and discussed a
16:34:10 7 video that was previously sent from the minor involving
16:34:14 8 the minor performing a sexual act that the minor had
16:34:17 9 sent to the defendant. The defendant, in this
16:34:22 10 conversation, also mentioned a classmate of the victim
16:34:27 11 in their middle school who was also 13, who the
16:34:31 12 defendant later, in later conversations, admitted to
16:34:34 13 engaging in sexual acts with, including engaging in
16:34:39 14 sexual intercourse with an additional victim who is not
16:34:44 15 charged in this Complaint. Then, about two weeks later,
16:34:48 16 the defendant continues to engage in conversations with
16:34:52 17 this minor victim. The conversations include
16:34:56 18 discussions of performing oral sex on the defendant, the
16:35:00 19 victim, the 13-year-old minor female agreeing to perform
16:35:04 20 oral sex on the defendant. The victim sending nude
16:35:07 21 photographs, and the defendant claiming in that
16:35:10 22 conversation that he was a police officer from
16:35:14 23 Cheektowaga. The next day, the sexual conversations
16:35:17 24 continue, the defendant provided that he masturbated to
16:35:22 25 the victim's images. The victim tells him in no

USA VS. M. REGAN

16:35:25 2 uncertain terms that she is in the eighth grade and
16:35:28 3 admits in the conversation to the defendant that she
16:35:34 4 says she is in the eighth grade. The defendant admits
16:35:38 5 to having oral and vaginal sex with another victim, who
16:35:42 6 is also in the eighth grade, who I referenced earlier.
16:35:45 7 The defendant asked the victim for her home address,
16:35:48 8 which she gave it to him. And they set up a time to
16:35:52 9 meet. And the victim sent videos, which, based on the
16:35:55 10 context of the conversation, I think it's fair to assume
16:35:58 11 that they were of a sexual nature, although, candor with
16:36:02 12 the Court, we were not able to view the videos based on
16:36:06 13 the nature of the app they were using. But, in the
16:36:10 14 context, it's pretty clear these were sexual videos that
16:36:15 15 were being sent to the defendant. Again, in this
16:36:18 16 conversation, the defendant asked the victim to perform
16:36:21 17 oral sex. And then goes so far as to ask the victim to
16:36:29 18 perform oral sex on a family member and then asked if
16:36:33 19 that minor male family member, the victim's minor male
16:36:40 20 family member, will perform oral sex on him. In a later
16:36:44 21 conversation on August 20th, so that prior conversation
16:36:47 22 was August 19th, the next day, they set up a time to
16:36:54 23 meet over text message. The victim tells the defendant,
16:36:58 24 as the plans become more concrete, that she is not on
16:37:02 25 birth control and the defendant discusses performing

USA VS. M. REGAN

16:37:07 2 other sexual acts, including anal sex on the 13-year-old
16:37:11 3 victim. The conversations continue. On August 26th, a
16:37:15 4 week later, the defendant has the victim's address, they
16:37:18 5 set up a plan, to meet. They create a plan to meet.
16:37:21 6 The defendant tells the victim minor, the eighth grader
16:37:40 7 that he wants to meet at a different street close by to
16:37:43 8 her home address to hide what is going on. He tells the
16:37:46 9 victim not to use her cell phone in his car. He
16:37:52 10 mentions again having sex with another minor classmate
16:37:57 11 of the victim. And for the first time, he mentions that
16:38:00 12 he engaged in a sexual act with his own family member,
16:38:04 13 with the defendant's family member. And, again, it's
16:38:08 14 very clear in these conversations that the defendant is
16:38:12 15 aware with full knowledge of the victim's age and the
16:38:16 16 age gap between the two. And, you know, he does the
16:38:21 17 math during these conversations and says, "I'll be 27
16:38:24 18 years older than you when we engage in these acts," and
16:38:29 19 kind of presses the victim as to why do you want to do
16:38:32 20 this with a 37-year-old man when you're 13. So, it's
16:38:39 21 very clear of the age gap between the two. The
16:38:55 22 conversations continue in terms of planning and
16:38:57 23 preparation to meet up to engage in these sexual acts.
16:39:02 24 And during each of these conversations or most of these
16:39:05 25 conversations, the overall majority, there are sexual

1 USA VS. M. REGAN

16:39:09 2 videos and sexual pictures being sent from the minor
16:39:12 3 victim to the defendant.

16:39:16 4 On August 28th, the minor victim and the
16:39:21 5 defendant finally meet up and engage in oral sex. The
16:39:28 6 defendant tells the victim afterwards to delete the text
16:39:32 7 messages between the two of them and this is a quote he
16:39:36 8 says, "No need for evidence, LOL." Three days later,
16:39:42 9 the defendant tells the victim, they continue to engage
16:39:46 10 in these conversations, the defendant tells the victim
16:39:49 11 that he engaged in sexual contact with two of his family
16:39:53 12 members, two minor female family members, and describes
16:39:59 13 the different scenarios. He asks the victim if she will
16:40:02 14 participate in having sex with his minor family members.
16:40:08 15 The victim sends photos and videos. The defendant
16:40:11 16 references meeting for additional sexual contact with
16:40:18 17 the victim. On September 3rd of this year, the
16:40:22 18 defendant texts the victim again to engage in sexual
16:40:30 19 acts with both the victim as well as his family members
16:40:33 20 and the victim sends him additional sexual videos and
16:40:37 21 then finally, between September 3rd and the end of
16:40:41 22 September, the victim engages with law enforcement and
16:40:48 23 law enforcement becomes involved and she is interviewed
16:40:51 24 at the child advocacy center. And in that interview and
16:40:56 25 in a later interview more recently with the FBI, on last

1 USA VS. M. REGAN

16:41:04 2 Thursday, the victim discusses these conversations with
16:41:11 3 a person she believed to be named "Jason," describes the
16:41:19 4 defendant's physical appearance, describes his car, and,
16:41:25 5 according to the victim, during conversations with the
16:41:28 6 defendant, he told her that, "If somebody finds out that
16:41:32 7 I'm talking to you, I'll come to your house," or words
16:41:35 8 to that effect, that if people find out that we're
16:41:39 9 engaged in, this relationship, he makes a threat in
16:41:47 10 those terms. It's very clear that the defendant has her
16:41:51 11 home address and knows where she lives.

16:41:55 12 Then the next day, December 4th, the
16:41:59 13 defendant was arrested and admitted to a relationship
16:42:07 14 with the victim. He hides the fact and lies and tells
16:42:10 15 the FBI that he thought she was 20 or 21, despite the
16:42:14 16 fact that in his messages with the victim, he knows she
16:42:18 17 is in the eighth grade, he knows the age difference
16:42:21 18 between them, that there is a 24 year age gap, but in
16:42:27 19 the conversation with the FBI, he hides that, lies and
16:42:31 20 says that he thought she was 20 or 21. He admits to the
16:42:36 21 sexual contact and engaging in oral sex. He kind of
16:42:43 22 lies and tries to state that he tried to end the
16:42:48 23 conversation with this female, he tried to stop the
16:42:53 24 relationship. He didn't want anything to happen in that
16:42:57 25 conversation.

1 USA VS. M. REGAN

16:42:57 2 So that is the factual landscape of what's
16:43:01 3 going on here. This is, obviously, egregious,
16:43:08 4 dangerous, the highest level of seriousness in terms of
16:43:10 5 criminal conduct. And when you look at, first of all,
16:43:16 6 there is a presumption in this case. With these facts,
16:43:20 7 the defendant cannot meet, meet that burden to show
16:43:30 8 there is conditions or combination of conditions that
16:43:34 9 will ensure safety of the public. The factors that we
16:43:37 10 look at under 3142(g), nature and circumstances of the
16:43:41 11 offense are outrageous in this case. The weight of the
16:43:44 12 evidence is very strong, including admissions from the
16:43:47 13 defendant, electronic evidence confirming these things
16:43:52 14 happened. Between the defendant's admissions, the
16:43:57 15 victim's statements, as well as the physical evidence we
16:44:00 16 have, the weight of the evidence bears strongly against
16:44:03 17 the defendant. And then, you know, you look at the
16:44:06 18 history and characteristics of the defendant and based
16:44:10 19 on all of this, this is not a person that the government
16:44:16 20 or the Court can trust to abide by any of the terms. He
16:44:21 21 is, throughout this, and the evidence we have throughout
16:44:25 22 this process, the defendant has sought to minimize, lie,
16:44:32 23 obviate, hide evidence, destroy evidence, suggest that
16:44:35 24 the minor female delete her text messages, meet on a
16:44:40 25 different street so they don't get caught. These are

1 USA VS. M. REGAN

16:44:43 2 all of the acts of somebody, you know, and in his
16:44:48 3 interview with the FBI, the defendant stated that he
16:44:52 4 thought the victim was 20, 21, this is not -- this is
16:44:55 5 somebody who appears to have no problem with lying
16:45:01 6 directly to authorities. And then, you know, this is
16:45:06 7 also somebody whose actions you cannot trust. We have
16:45:10 8 an actual victim here who the defendant has made threats
16:45:13 9 to that if he gets caught, he is coming for her. This
16:45:20 10 is the highest level of danger. And based on that,
16:45:23 11 based on the presumption and nature and circumstances of
16:45:27 12 the offense, the government takes the position that the
16:45:31 13 only appropriate outcome here, the only way to ensure
16:45:35 14 safety of the public is for the defendant to continue to
16:45:38 15 remain in detention.

16:45:42 16 MAGISTRATE JUDGE SCHROEDER: Ms. Kubiak?

16:45:49 17 MS. KUBIAK: Thank you, your Honor. While
16:45:52 18 the Court is aware, this is a presumption case, it is a
16:45:56 19 rebuttable presumption. Mr. Regan does possess the
16:46:00 20 presumption of innocence. And the Court can detain him
16:46:09 21 if there are no combination of conditions that will
16:46:13 22 reasonably assure his appearance and safety to the
16:46:15 23 community. And I would submit that there are a
16:46:18 24 combination of conditions that this Court can impose to
16:46:21 25 address both a risk of nonappearance as well as

USA VS. M. REGAN

16:46:26 2 ameliorate the government's concern with respect to
16:46:29 3 danger to the community. The Pretrial Services Report
16:46:32 4 lists three things under assessment of nonappearance. I
16:46:36 5 think each and every one of those things can be
16:46:38 6 addressed by a combination of conditions. One, they
16:46:43 7 list the possession of a U.S. Passport. Your Honor can
16:46:47 8 order Mr. Regan to surrender that to the Clerk of the
16:46:53 9 Court. There is a reference to leaving the scene of an
16:47:05 10 accident. He had a DWI misdemeanor imposed over 10
16:47:08 11 years ago, and he successfully completed probation. So
16:47:11 12 he has a history being able to comply with conditions of
16:47:14 13 release as well as complying with conditions of
16:47:18 14 probation and successfully completing those probationary
16:47:24 15 terms. The conflicting information, I think it's minor,
16:47:27 16 with respect to some of the things that the wife
16:47:29 17 indicated in verifying the report versus what Mr. Regan
16:47:34 18 provided. So, as to those three things, I think there
16:47:37 19 is a combination of conditions that this Court can
16:47:40 20 impose. The Court can also use some type of surety bond
16:47:44 21 or signature bond that a family member could execute to
16:47:47 22 ensure his appearance. We would ask for electronic
16:47:53 23 monitoring or GPS to be imposed where he is on home
16:47:58 24 incarceration, that he comply with any conditions of
16:48:04 25 substance abuse treatment or evaluation and mental

1 USA VS. M. REGAN

16:48:08 2 health evaluation and treatment. This Court can impose
16:48:11 3 a zero tolerance and no consumption of alcohol with
16:48:16 4 respect to any concern that the prior DWI would provide
16:48:21 5 to the Court.

16:48:22 6 With respect to dangerousness, Judge, there
16:48:25 7 are four things, again, listed in the report that
16:48:27 8 indicate that there is an assessment of danger. One,
16:48:31 9 again, is the prior DWI, which, again, was 10 years ago
16:48:36 10 and he successfully completed probation. And, again,
16:48:40 11 that was resolved by way of an unclassified misdemeanor
16:51:29 12 conviction in 2010. The probation report also
16:51:34 13 references the possession of a firearm. That firearm
16:51:37 14 was legally possessed by Mr. Regan and has been
16:51:41 15 surrendered, and, to my knowledge, there are no other
16:51:43 16 firearms or weapons located at the residence where he
16:51:46 17 can return and reside. So that can be ameliorated by
16:51:50 18 the fact that that weapon is no longer in his
16:51:52 19 possession. The nature and circumstances of the offense
16:51:55 20 that Mr. Cantil just outlined, obviously, you know, go
16:51:59 21 to the presumption of innocence. Some of the supporting
16:52:03 22 and corroborating evidence we haven't been able to see
16:52:06 23 yet, so I can't really confront that or take issue with
16:52:10 24 that. But he does have the presumption of innocence
16:52:13 25 that he maintains throughout the case. And, again, the

USA VS. M. REGAN

16:52:17 2 conflicting information, I think, is minor with respect
16:52:20 3 to what is contained in the report. So, there is a
16:52:24 4 combination of conditions that this Court can impose to
16:52:28 5 ameliorate both of those conditions. Judge, you can put
16:52:32 6 him on GPS monitoring and know where his whereabouts are
16:52:35 7 known 24/7. He can be ordered to participate in
16:52:38 8 counseling. And he can be ordered to not have any
16:52:41 9 contact whatsoever with the victim or any witnesses
16:52:44 10 whatsoever in this case. He can participate in the
16:52:47 11 computer monitoring program with respect to the U.S.
16:52:54 12 Probation office, be directed not to have any electronic
16:52:58 13 devices in his home whatsoever, participate in sex
16:53:04 14 offender treatment, should it be required. And, lastly,
16:53:08 15 Judge, just with respect, as the Court is aware, you
16:53:11 16 know, the danger with respect to COVID going through our
16:53:15 17 local facilities right now, under 3142(i), I think that
16:53:21 18 is an exceptional circumstance the Court can take notice
16:53:26 19 of. In addition, he is a corrections officer and so I
16:53:29 20 would also submit that position, in and of itself, may
16:53:34 21 put him in additional peril or danger with respect to
16:53:40 22 being in a local jail facility and potentially coming
16:53:43 23 into contact with other people who might have been in
16:53:46 24 the state, New York State Department of Corrections
16:53:48 25 system. So based upon that, I would submit there is a

1 USA VS. M. REGAN

16:53:52 2 combination of conditions that this Court could impose
16:53:56 3 with regard to Mr. Regan.

16:53:59 4 MAGISTRATE JUDGE SCHROEDER: Mr. Cantil,
16:54:00 5 anything you want to add?

16:54:08 6 MR. CANTIL: Sorry, your Honor. I would
16:54:10 7 just add, I failed to mention this in my closing
16:54:14 8 remarks, I would just add that some of the conversations
16:54:20 9 that the defendant had with the minor victim included,
16:54:23 10 kind of, ideations and statements that he had previously
16:54:28 11 engaged in sexual acts with family members, and, you
16:54:34 12 know, both in an interest in doing so again, both male
16:54:39 13 and female. I think it's going to be difficult for the
16:54:44 14 Court to craft kind of restrictions that would have him
16:54:51 15 stay away from all family members, you know, during the
16:54:55 16 holiday, the level of depravity that the defendant is
16:55:01 17 willing to go through is so high and there are other
16:55:05 18 potential victims out there that it sounds like, based
16:55:08 19 on his statements and the statements of the victim, that
16:55:11 20 may exist, that the danger is kind of acute to certain
16:55:14 21 people in the community, but they are also kind of
16:55:19 22 broader as well. I failed to mention that at the end.
16:55:22 23 I would just add there is this wrinkle with kind of
16:55:29 24 incestuous assault, that there is consideration. And,
16:55:32 25 again, I would just submit that there is no combination

1 USA VS. M. REGAN

16:55:36 2 of conditions that are going to adequately offer
16:55:41 3 protection it for the community.

16:55:44 4 PROBATION: Judge, if I may add with respect
16:55:50 5 to the conflicting information.

16:55:51 6 MAGISTRATE JUDGE SCHROEDER: Certainly.

16:55:52 7 PROBATION: The defendant did report to us
16:55:54 8 that he does have a 5-year-old Goddaughter and a minor
16:55:59 9 nephew, which were at his residence at the time that he
16:56:04 10 was arrested for the instant offense. He further stated
16:56:08 11 that they do visit several times a week to visit with
16:56:14 12 his minor children. Judge, he wasn't initially
16:56:17 13 forthcoming with this information, but he did eventually
16:56:21 14 report it. His wife reported otherwise. She stated
16:56:27 15 that he doesn't have any contact with any minors, made
16:56:32 16 no mention of any family members that were at the house
16:56:37 17 the same day, so, Judge, that is the conflicting
16:56:41 18 information that we reported. I just wanted to clarify
16:56:44 19 that.

16:56:46 20 MAGISTRATE JUDGE SCHROEDER: Okay. In
16:56:51 21 considering the government's motion to have the
16:56:53 22 defendant detained, it's my obligation to take into
16:56:57 23 account all of the facts and circumstances that have
16:57:02 24 been made known to the Court, and consider those in
16:57:04 25 their total context. And I begin that process by,

USA VS. M. REGAN

first, recognizing, expressly stating the presumption of innocence. The defendant is entitled, both through the Constitution of the United States and in the Bail Reform Act of 1984, as amended, and he is entitled to enjoy that presumption throughout the entire case. I am also taking into account a different presumption, and that is the presumption found in the Bail Reform Act, which the government cites and relies upon in support of its motion to have the defendant detained, and that is the presumption of dangerousness, which Congress has found to exist when someone is charged with certain types of crimes, including the crimes with which the defendant presently is charged. Admittedly, that presumption is a rebuttable presumption. But, based on what has been proffered by the government as well as what is contained in the sworn affidavit of the agent in support of the Criminal Complaint, and the allegations set forth in the Criminal Complaint, and what has been proffered on behalf of the defendant by defense counsel, in considering all of those circumstances in their totality, I conclude that that presumption of dangerousness has not been rebutted.

I also find that based on what has been presented and, once again, what is contained in the

1 USA VS. M. REGAN

16:58:48 2 affidavit in support of the Criminal Complaint
16:58:51 3 establishes clear and convincing evidence to the Court
16:58:54 4 that the defendant does constitute a danger to members
16:58:57 5 of the community and especially minors. But I
16:59:06 6 emphasize, once again, the presumption of innocence to
16:59:09 7 which the defendant is entitled to. It would appear to
16:59:12 8 the Court, based on what has been proffered by the
16:59:15 9 government that the government does have a strong case
16:59:17 10 in that it makes reference to text messages allegedly
16:59:23 11 made by and between the defendant and a victim as well
16:59:29 12 as statements from the victim and other types of
16:59:33 13 corroborating evidence. When I consider the nature of
16:59:38 14 the charges and what has been proffered, as far as
16:59:42 15 alleged physical contact and undertakings to conduct
16:59:47 16 physical activity of a sexual nature with alleged
16:59:54 17 minors, I have concluded that there are no terms and
16:59:58 18 conditions that I could impose or create that would
17:00:03 19 really guarantee safety of any member or members of the
17:00:07 20 community. And because of that, I am granting the
17:00:12 21 government's motion and hereby remand the defendant to
17:00:14 22 the custody of the U.S. Marshal Service until further
17:00:17 23 order of the Court.

17:00:20 24 As to a preliminary hearing, Ms. Kubiak does
17:00:22 25 the defendant waive his right to the hearing.

1 USA VS. M. REGAN

17:00:24 2 MS. KUBIAK: Yes, your Honor. Would the
17:00:27 3 Court be willing to set a preliminary or a 48(b) date in
17:00:31 4 light of what is presently going on with respect to
17:00:34 5 COVID so that I can try and get some of the forensic
17:00:38 6 investigation from the government and possibly pursue
17:00:43 7 pretrial or pre-indictment negotiations.

17:00:47 8 MR. CANTIL: The government would join in
17:00:48 9 that request, your Honor.

17:00:49 10 MAGISTRATE JUDGE SCHROEDER: All right. I
17:00:50 11 will give one 48(b) date.

17:00:53 12 MS. KUBIAK: Thank you, your Honor.

17:00:54 13 MAGISTRATE JUDGE SCHROEDER: With the
17:00:55 14 understanding that there will be no adjournments of
17:01:38 15 that. And I realize there will be the trickle-type of
17:01:50 16 evidence the e-mails or SnapChats or text messages,
17:01:54 17 whatever the government has been gathering and I
17:02:01 18 understand that may take some time, not only to produce
17:02:04 19 and turn over to the defense, but then have the defense
17:02:07 20 analyze it as well. And, so, I'm thinking unless I hear
17:02:12 21 something to the contrary, that would convince me
17:02:15 22 otherwise 60-day time period to do what the parties wish
17:02:21 23 to do in trying to resolve this matter. Ms. Kubiak.

17:02:26 24 MS. KUBIAK: I would ask for that, Judge,
17:02:28 25 that would be our request.

1 USA VS. M. REGAN

17:02:32 2 MAGISTRATE JUDGE SCHROEDER: Sixty days
17:02:34 3 agreeable?

17:02:36 4 MR. CANTIL: That is fine with the
17:02:38 5 government, Judge.

17:02:38 6 MAGISTRATE JUDGE SCHROEDER: You're on mute.

17:02:40 7 M. CANTIL: That's fine with the government,
17:02:41 8 your Honor.

17:02:42 9 MAGISTRATE JUDGE SCHROEDER: You're on mute,
17:02:43 10 Ms. Kubiak.

17:02:43 11 MS. KUBIAK: Yes, that is agreeable.

17:02:45 12 MAGISTRATE JUDGE SCHROEDER: Now, you're,
17:02:46 13 okay, now you're okay, Ms. Kubiak. All right. And is
17:02:50 14 it the position of the defendant that the time between
17:02:53 15 now and February 12th, 2021, will, in fact, be utilized
17:03:15 16 in such a way so as to operate and enure to the benefit
17:03:19 17 of the defendant, and, therefore, such time should be
17:03:21 18 included for purposes of the Speedy Trial Act. The time
17:03:25 19 requirement set forth in Rule 5.16, the Federal Rules of
17:03:29 20 Criminal Procedure, and any other statutory time
17:03:31 21 requirements that might be applicable.

17:03:33 22 MS. KUBIAK: Yes, your Honor.

17:03:34 23 MAGISTRATE JUDGE SCHROEDER: And, Mr.
17:03:36 24 Cantil, is it the government's position that the time
17:03:38 25 between now and February 12th, 2021, will operate in the

1 USA VS. M. REGAN

17:03:42 2 interest of justice in this case, and, therefore, such
17:03:45 3 time should be excluded for purposes of the Speedy Trial
17:03:48 4 Act?

17:03:48 5 MR. CANTIL: That is the government's
17:03:49 6 position, your Honor.

17:03:50 7 MAGISTRATE JUDGE SCHROEDER: Based on the
17:03:51 8 representations made by counsel for the parties herein,
17:03:55 9 I find that the time between now and February 12th,
17:03:59 10 2021, will, in fact, be utilized in such a way so as to
17:04:04 11 operate and enure to the benefit of the defendant as
17:04:07 12 well as to operate in the interest of justice in this
17:04:08 13 case in that such time is going to be utilized to allow
17:04:12 14 the government an opportunity to provide voluntary
17:04:15 15 discovery materials to the defendant, and, therefore,
17:04:18 16 give defense counsel sufficient time within which to
17:04:21 17 review the materials provided as well as to prepare in
17:04:25 18 the representation of the defendant so as to provide the
17:04:28 19 defendant with effective assistance of counsel that
17:04:30 20 being his constitutional right, which right outweighs,
17:04:33 21 the public's right or interest to a speedy trial or
17:04:35 22 disposition in this matter. Further, such time is going
17:04:38 23 to be utilized by the parties for the purpose of
17:04:41 24 conducting pretrial negotiations with the objective of
17:04:45 25 reaching an agreement that will dispose of this matter

1 USA VS. M. REGAN

17:04:48 2 without the necessity of a trial. And should that
17:04:50 3 objective be accomplished, the public will also benefit
17:04:54 4 from same in that it will be spared the cost and
17:04:57 5 expenditures of resources that will be necessitated in
17:05:00 6 the holding of a trial and possible appeal. For all of
17:05:03 7 those reasons, the time is justifiably and validly
17:05:07 8 excludable, and is hereby so excluded pursuant to and in
17:05:33 9 accordance with the provisions contained in Title 18 of
17:05:36 10 the U.S.C. Section 3161(h)(7)(A) and Section
17:05:40 11 3161(h)(7)(B)(iv). And Mr. Cantil, will you provide an
17:05:45 12 order of exclusion to that effect, please?

17:05:48 13 MR. CANTIL: Yes, your Honor.

17:05:49 14 MAGISTRATE JUDGE SCHROEDER: I hereby issue
17:05:50 15 my order pursuant to Rule 48(b) of the Federal Rules of
17:06:01 16 Criminal Procedure, wherein and whereby the Criminal
17:06:13 17 Complaint here in will be deemed dismissed without
17:06:16 18 prejudice effective February the 12th, 2021 with the
17:06:21 19 further admonition that there will be no further
17:06:24 20 extensions of that date unless it's solely for the
17:06:26 21 purpose of having a plea effectuated in front of a
17:06:30 22 district judge.

17:06:32 23 Anything further at this time.

17:06:34 24 MS. KUBIAK: No, your Honor. Thank you very
17:06:35 25 much.

1 USA VS. M. REGAN

17:06:36 2 MR. CANTIL: Nothing from the government.

17:06:38 3 MAGISTRATE JUDGE SCHROEDER: Thank you.

17:06:39 4 Everyone stay safe.

17:06:41 5 MS. KUBIAK: You too. Thank you.

6 * * *

7 CERTIFICATE OF REPORTER

8

9 I certify that the foregoing is a correct transcript
10 of the record to the best of my ability of proceedings
11 transcribed from the audio in the above-entitled matter.

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13 S/ Karen J. Clark, RPR

14 Official Court Reporter

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